

### REMARKS

In response to the Office Action mailed on December 16, 2004, Applicants amended claims 1, 20, 22, and 30, and cancelled claims 10 and 31. Applicants also added new claims 32-58. Claims 1-9, 11-30, and 32-58 are presented for examination.

Applicants affirm their election without traverse to prosecute the invention of Group I (claims 1-30), directed to particles and compositions including particles. Applicants note that this election has been made without traverse.

The Examiner provisionally rejected claims 1-30 under the doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 19-33 of co-pending U.S. Patent Application No. 10/215,594. Applicants request that this provisional rejection be held in abeyance.

The Examiner rejected independent claim 1 and its dependent claims 3, 5-9, 11, 13, 14, 18 and 19 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,902,834 (Porrvik), and/or under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,632,531 (Blankenship).<sup>1</sup> However, the Examiner did not reject previously pending claim 10 based on either Porrvik or Blankenship. Applicants amended claim 1 to include the limitations of previously pending claim 10 and canceled claim 10. Applicants therefore request reconsideration and withdrawal of the rejection of claims 1, 3, 5-9, 11, 13, 14, 18 and 19 under 35 U.S.C. § 102(b) and/or 35 U.S.C. § 102(e).

The Examiner also rejected claim 20 under 35 U.S.C. § 102(b) as being anticipated by Porrvik and under 35 U.S.C. § 102(e) as being anticipated by Blankenship. But, as amended, claim 20 covers a polymeric particle that includes a polyvinyl alcohol and has a diameter of about 500 microns or less. The particle has a first average pore size in an interior region and a second average pore size at a surface region, where the first average pore size is different from the second average pore size. Neither Porrvik nor Blankenship discloses such a particle.

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<sup>1</sup> The Examiner stated that Blankenship necessarily discloses particles having different regions with different pore densities because Blankenship does not disclose that his particles are uniformly porous. (See December 16, 2004 Office Action, page 5.) Applicants do not concede that the Examiner's characterization of Blankenship is correct. Nor do Applicants concede that any of the Examiner's other characterizations of the cited references are accurate.

Applicants therefore request reconsideration and withdrawal of the rejection of claim 20 under 35 U.S.C. § 102(b) and 35 U.S.C. § 102(e).

The Examiner further rejected claims 22 and 25-29 under 35 U.S.C. § 102(b) as being anticipated by Porrvik and under 35 U.S.C. § 102(e) as being anticipated by Blankenship. As amended, however, claims 22 and 25-29 cover a plurality of particles, where at least some of the particles include a polyvinyl alcohol and have a diameter of about 500 microns or less. At least some of the particles having a diameter of about 500 microns or less have a first density of pores in an interior region and a second density of pores at a surface region, where the first density is different from the second density. Neither Porrvik nor Blankenship discloses such particles. Thus, Applicants request reconsideration and withdrawal of the rejection of claims 22 and 25-29 under 35 U.S.C. § 102(b) and 35 U.S.C. § 102(e).

The Examiner also rejected claim 30 under 35 U.S.C. § 102(b) as being anticipated by Porrvik and under 35 U.S.C. § 102(e) as being anticipated by Blankenship. But, as amended, claim 30 covers a plurality of particles, where at least some of the plurality of particles include a polyvinyl alcohol and have a diameter of about 500 microns or less. At least some of the particles having a diameter of about 500 microns or less have a first average pore size in an interior region and a second average pore size at a surface region, where the first average pore size is different from the second average pore size. Neither Porrvik nor Blankenship discloses such particles. Accordingly, Applicants request reconsideration and withdrawal of the rejection of claim 30 under 35 U.S.C. § 102(b) and 35 U.S.C. § 102(e).

The Examiner crossed out a number of references on the Form PTO-1449 submitted with the Information Disclosure Statement filed on October 23, 2003. Some of these references are Internet publications. According to the Examiner, these Internet publications are "irrelevant art" or "[n]ot eligible as prior art." But as explained in the M.P.E.P., Internet publications actually are eligible as prior art:

An electronic publication, including an . . . Internet publication, is considered to be a "printed publication" within the meaning of 35 U.S.C. 102(a) and (b) provided the publication was accessible to persons concerned with the art to

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which the document relates. See *In re Wyer*, 655 F.2d 221, 227, 210 USPQ 790, 795 (CCPA 1981) . . . . (M.P.E.P. § 2128, 8<sup>th</sup> ed., Rev. 2, May 2004.)

The Examiner further noted that "web links usually cease to exist after [a] certain time." But Applicants did not just provide web links in conjunction with the citation of these Internet publications. Rather, Applicants provided both web links and actual printouts of the Internet publications. Accordingly, the question of whether the web links continue to provide access to the cited Internet publications is irrelevant. Thus, Applicants will resubmit these references in an Information Disclosure Statement.

Applicants believe that the claims are in condition for allowance, which action is requested.

Enclosed is a check for excess claim fees. Please apply any other charges or credits to deposit account 06-1050.

Respectfully submitted,



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